

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPLICATION NO. 95 OF 2021

(From the Decision of the High Court of Tanzania, at Mbeya in Land Appeal No. 70 of 2020, Originated in the District Land and Housing Tribunal for Mbeya in Land Application No. 196 of 2019.).

SALUM KIGUGA.....APPLICANT

VERSUS

- 1. HARUNA KIBUGA**
- 2. EBIATHA MTENGA**
- 3. JOSEPH MWANGIMBA**

- 4. SELINA MGUTE**
- 5. SELINA MGUTE (Administratrix of the
Estates of the late PAUL MLINDA)**

.....**RESPONDENTS**

RULING

Date of last Order: 11.05.2022

Date of Judgment: 17.06.2022

Ebrahim, J.

The applicant SALUM KIGUGA has lodged the instant application praying for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 70 of 2020. The application

is supported by an affidavit of John Owegi, Counsel for the applicant. The application has been brought under the provisions of Section 47(2) of the Land Disputes Courts Act, Cap 216 R.E 2019.

The respondents herein had initially instituted a suit against the applicant in the District Land and Housing Tribunal for Mbeya claiming for a farm land located at Majengo village in Mbarali District. The Trial tribunal decided in favour of the applicant. Dissatisfied the respondents appealed to this court. This court overturned the decision of the trial Tribunal, the respondents were thus, declared owners of the disputed land. The applicant was aggrieved hence the present application.

In this application, the applicant was represented by advocate Hosia Adam holding brief of advocate John Owegi with leave to proceed. Whereas the respondents were represented by advocate Luka Ngogo.

Submitting in support of the application, counsel for the applicant prayed to adopt the content of the affidavit. He also referred this

court to paragraph 5 (a-d) of the affidavit which he said contain the points to be considered in granting this application.

Responding to the Counsel's for the applicants' submission, advocate Ngogo challenged the applicant's application on the basis that the points raised by the applicant were not among the grounds of appeal which were determined by this court. Advocate Ngogo referred to the case of **Elibariki Jacob v. Babu Libilibi & Another**, Misc. Land Application No. 88 of 2010 HCT at Arusha (unreported) on the requisites of granting application of this nature. According to him the applicant has not demonstrated the arguable grounds worth to be determined by the Court of Appeal. He thus prayed for dismissal of the application with costs.

In rejoinder, advocate Adam insisted that the applicant has raised arguable grounds which needs the attention of the Court of Appeal. He reiterated his previous prayers.

I have considered the submissions by counsel for the parties. The issue for consideration is whether or not the applicant has

demonstrated arguable grounds worth for determination by the Court of Appeal.

As a matter of general principle, leave to appeal is not automatic. The factors for considering grant of leave by the court are stipulated in the case of **Rutagatina C.L v. The Advocates Committee & Another**, Civil Application No 98 of 2010 (Unreported) that quoted with approval the case of **British Broadcasting Corporation vs Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (unreported).

It is thus, the requirement of law that leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal. However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted.

In its words, the CAT in **Harban Haji and Another Vs. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 (unreported) clearly stated that:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole revealed such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeritorious matters and to enable it to give adequate attention to cases of true public importance"

From the above quotation, leave is granted where there are prima facie grounds meriting an appeal before the Court of Appeal. The essence of leave is to ensure that the Court of Appeal is saved from the menace of unmeritorious matters and wisely concentrate on matters of public importance, law, and or contentious issues that need its guidance.

I have thoroughly gone through the affidavit filed by the Counsel for the Applicant particularly para 5 (a) –(d) and followed his

submissions. Essentially, the application is sought on the following points; that the this court disregarded the principle of priority regarding the uninterrupted use of land and occupation of land by the 1st Applicant since 1985 to the time this dispute arose. That this court failed to construe the doctrine of adverse possession in accordance to the law regarding long use and occupation of the suit land by the applicant compared to the respondents, whether this court correctly ignored the Village Land Council minutes of another point is allocation of land and letters of allocation to the applicant while the Rujewa Town Council recognized it; and whether the case was proved to the standard set out by the law.

In my scrutiny to see if the proceedings shows the disturbing features pointed by the applicant; I am of the concerted view that there none. As correctly argued by Mr. Ngogo for the respondents the applicant has even raised new issues which were neither dealt by the trial Tribunal nor by this court. Indeed, this court dealt deeply with the issue of double allocation and the question of who was the rightful owner.

That being said, I am of the firm position that the application does not disclose any contentious issue to warrant the intervention of the Court of Appeal. I thus, dismiss it with costs.

Accordingly ordered.



Mbeya

17.06.2022

A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", written over a circular stamp.

R.A. Ebrahim

JUDGE

Date: 17.06.2022.

Coram: Hon. D. G. Luwungo, Ag-DR.

1st Applicant:

For the Applicants: Mr. Osiah - Advocate.

1st Respondent: Absent

2nd Respondent: Present

3rd Respondent: Present

4th Respondent:

5th Respondent: Absent.


For the Respondent:

B/C: Gaudensia.

Court: Ruling delivered on this 17th day of June 2022 in the presence of Mr. Osiah Advocate for the Applicant and 2nd and 3rd Respondents in person only.


Sgd: D. G. Luwungo
Ag-Deputy Registrar
17/06/2022

Court: Right of Appeal fully explained.


D. G. Luwungo
Ag-Deputy Registrar
17/06/2022

DEPUTY REGISTRAR
HIGH COURT
17/06/2022